



079037

CONTRACT #:

STATE OF UTAH CONTRACT

1. CONTRACTING PARTIES: This contract is between the following agency of the State of Utah:

DEPARTMENT OF TRANSPORTATION 810 **UDOT - Project Development**
to be referred to as STATE and the following supplier to be referred to as CONTRACTOR:

CMT Materials Technologies Inc.

215 North Redwood Rd, Ste 2
Salt Lake City UT 84
www.cmtlaboratories.com

Contact Person: **Doug Watson**
Phone Number: **(801) 870-6736**
Fax Number:
e-mail address: **bill@cmtlaboratories.com**

202112556
Federal Tax ID #

122232A
Vendor Code

92590000000
Commodity Code(s)

LEGAL STATUS OF CONTRACTOR:

☐ Sole Proprietor ☐ Non-Profit Corporation ☒ For Profit Corporation ☐ Partnership ☐ Government Agency

2. CONTRACT TYPE & PURPOSE:

☒ Requirements ☐ Firm-fixed price ☐ Time & Materials ☐ Other:

To provide UDOT TTQP program testing conducting practical examinations, Proctor written examinations, & deliver practical results and written exams to QA Section.

3. PROCUREMENT: This contract is entered into as a result of the Procurement process on Bid# , FY 2007 or the pre-approved sole source. If sole source, list approval #: **DGR017(2)#2007-44**.

4. CONTRACT PERIOD: Effective date: **09/05/2006**. Termination date: **09/05/2008**.
Contract will expire on this date unless terminated early or extended in accordance with the terms of this contract.
With 1-One year Renewal Option: Renewable through: **09/05/2009**.

5. CONTRACT COSTS: See attached pricing on Attachment B.
* ☐ No maximum allowance has been pre-set for requirements contracts.

6. ATTACHMENT A: Division of Purchasing's Standard Terms & Conditions
ATTACHMENT B: Scope of work
ATTACHMENT C: Special terms and conditions

Any conflicts between Attachment A and other attachments will be resolved in favor of Attachment A.

7. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:

- A. All other governmental laws, regulations or actions applicable to the goods and/or services authorized by this contract.
B. Utah State Procurement Code, Procurement Rules and Contractor's responses to approval #: **DGR017(2)#2007-44**, dated **09/05/2006**.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

Doug Watson 9-8-06
Contractor's Signature
(CMT) Materials Technologies Inc.
Contractor's Business Name
President
Title

STATE OF UTAH

Tracie Montano 9-6-06
UDOT Procurement Services Manager, Tracie Montano
CONTRACT RECEIVED AND
PROCESSED BY
DIVISION OF FINANCE
Director, Division of Finance
SEP 18 2006

LaDonna Haslem
Agency Contact Person

(801) 965-4068
Phone Number

lhaslem@utah.gov
e-mail address

lhaslem@utah.gov
e-mail address

ATTACHMENT A: STATE OF UTAH STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the State to purchase certain specified services, and other approved purchases for the State.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.
4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and State Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.
6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the State to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the State. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the State for these contract services. Persons employed by the State and acting under the direction of the State shall not be deemed to be employees or agents of the Contractor.
7. **INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the State OF UTAH, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.
8. **EQUAL OPPORTUNITY CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.
9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the same persons or by persons holding the same position as persons who signed the original agreement on behalf of the parties hereto, and attached to the original signed copy of the contract.
11. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.
12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
13. **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.
14. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.
15. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable

for any special purposes that the State has relied on the contractor's skill or judgment to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

16. **PUBLIC INFORMATION:** Contractor agrees that the contract will be a public document, and may be available for distribution. Contractor gives the State express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.
17. **DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations.
18. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the State. The State contract number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the State will be those prices listed in the contract. The State has the right to adjust or return any invoice reflecting incorrect pricing.
19. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the Contractor will be remitted by mail unless paid by the State of Utah's Purchasing Card (major credit card).
20. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the State, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.
21. **ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State.
22. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the State to declare Contractor in default of the contract:
 1. Nonperformance of contractual requirements;
 2. A material breach of any term or condition of this contract. The State will issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the State may do one or more of the following:
 1. Exercise any remedy provided by law;
 2. Terminate this contract and any related contracts or portions thereof;
 3. Impose liquidated damages, if liquidated damages are listed in the contract;
 4. Suspend Contractor from receiving future solicitations.
23. **FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.
24. **PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63-56-1002, Utah Code Annotated, 1953, as amended).
25. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be:
 1. State Standard Terms and Conditions;
 2. State Additional Terms and Conditions;
 3. Contractor Terms and Conditions.

(Revision date: July 5, 2005)

Attachment B
Scope of Work

TRANSPORTATION TECHNICIAN TESTING AND QUALIFICATION PROGRAM

Services provided are to:

- 1) Qualify Technicians utilizing the UDOT TTQP program
(<http://www.udot.utah.gov/index.php/m=c/tid-415>)
- 2) Conduct practical examinations
- 3) Proctor written examinations
- 4) Deliver practical results and written exams to QA section

Services will be provided:

- 1) On an as-needed basis for qualifying technicians
- 2) Classes run for two or three consecutive days

Services that are provided:

- 1) To meet FHWA Quality Assurance specifications which require that technicians working on federal projects be qualified.
- 2) Consultant will conduct qualification classes, reviewing required field operating procedures on the first day. Hands-on practical exams will be conducted on the second day and third day (if required) and a written exam will be administered.
- 3) Technicians will be qualified by demonstrating the ability to perform required lab tests through hands-on demonstrations and a written exam with a score of 70% correct as prescribed by the TTQP policy.

Locations of the services that are to be provided:

- 1) Technician review and practical qualification will be conducted, in most cases, at the UDOT Materials Testing Facility in West Valley City.
- 2) In some cases, qualification courses will be conducted on-site in private labs or at the region materials laboratories.

The contractor will be required to perform service:

- 1) On an as-needed basis for qualifying technicians
- 2) Providing Instruction in any of the 6 areas of qualification.
- 3) For consultant-employed and UDOT technicians who provide testing services for UDOT

Services must be scheduled by the UDOT Quality Assurance Section:

Utah Department of Transportation
Central Materials Division, Attn: Bryan Lee Cell Phone: 801 633-8770
Box 148290
4501 South 2700 West
Salt Lake City UT 84114-8290

Contract Pricing Terms

The Training courses will be at \$450.00 daily.

The Consultant will be paid \$50.00 per hour for an 8-hour class. The classes have a curriculum that takes approximately 8 hours per day to complete. Some classes may be two to three days consecutively.

There will be a \$50.00 a day food allowance.

For courses requiring out of town travel (beyond 100 miles) a \$100 per diem will be provided.

For travel to facilities other than the UDOT West Valley facility and the Region Two materials laboratory, mileage will be reimbursed at \$0.55/mile.

This contract is not to exceed \$30,000.00.

Key Contacts:

Utah Department of Transportation
Bryan Lee , Quality Assurance Engineer
Box 148290
4501 South 2700 West
Salt Lake City, UT 84114-0100
BRYANLEE@utah.gov
Fax (801) 965-4604
Cell Phone: 801 633-8770

Utah Department of Transportation
Tim Biel, Engineer for Materials
Box 148290
4501 South 2700 West
Salt Lake City, UT 84114-0100
TBIEL@utah.gov
Fax (801) 965-4403
Cell Phone: 801 633-6259

Attachment C
SPECIAL TERMS AND CONDITIONS

1. **Payment Schedule:** Payments to the Contract shall be made after the submission of a detailed invoice.
2. **Invoicing:** The contractor shall submit invoices for authorization to pay to:

Utah Department of Transportation
Central Materials Division, Attn: Bryan Lee C Phone: 801 633-8770
Box 148290
4501 South 2700 West
Salt Lake City UT 84114-8290

Payment of invoices will be sent via USPS. The State reserves the right to correct invoices.

THE CONTRACT NUMBER MUST APPEAR ON ALL INVOICES FOR PAYMENTS.

3. **Price Guarantees:** The Contractor agrees the prices quoted on these services of this contract shall be guaranteed through completion of the project.
4. **Notification:** Notice given under this Contract shall be written, or sent by facsimile or other electronic means. Written notice shall be sent by registered or certified mail, postage prepaid, return receipt requested, or by any other overnight delivery service which delivers to the noticed destination and provides proof of delivery to the sender. Facsimile or other electronic notice must be followed with three (3) days by written notice. All notices shall be effective when first received at the following addresses:

to Contractor:

CMT Materials Testing
215 North Redwood Rd., Ste.2
Salt Lake City UT
bill@cmtlaboratories.com
(801) 870-6736

to State:

Utah Department of Transportation
Attn: Bryan Lee
Box 148290
4501 South 2700 West
Salt Lake City, UT 84114-0100
BRYANLEE@utah.gov
Fax (801) 965-4101
Cell Phone: 801 633-8770

Utah Department of Transportation
Attn: LaDonna Haslem
Box 148260
4501 South 2700 West
Salt Lake City UT 84114-8260
lhaslem@utah.gov
Fax (801) 965-4073

5. **Change in Personnel or Resources:** No change in personnel or resources assigned to this project will be permitted without prior written approval of STATE Project Manager.
6. **Employment of State Employees:** The Contractor agrees not to engage in any way the services on this contract of any present or former State employee who was involved as a decision maker in the selection or approval process or who negotiated and/or approved billings or contract modification for this contract.
7. **Quality of Services:** Contractor represents to State that it is experienced in and thoroughly familiar with all aspects of the services required hereunder and is properly qualified as applicable and is equipped, organized, and financially able to perform the services.